

REMARKS

Status of claims

Claims 1-8 are presently pending in this patent application. Claims 9-24 were previously withdrawn in response to a restriction requirement. Applicant has formally cancelled claims 9-24 in this amendment, and requests that the Examiner enter the cancellation of claims 9-24 to move this patent application expeditiously towards formal allowance.

Claim rejections under 35 USC 103

Claims 1 and 2 have been rejected under 35 USC 103(a) as being unpatentable over Lehureau (4,025,784) in view of Tanaka (6,608,809) and further in view of McClellan (2004/0160510). Claims 3-4 and 6-8 have been rejected under 35 USC 103(a) as being unpatentable over Lehureau in view of Tanaka and McClellan, and further in view of Lehureau (2004/0027964). Claim 5 has been rejected under 35 USC 103(a) as being unpatentable over Lehureau in view of Tanaka and McClellan, and further in view of Freeman (6,901,598). Claim 1 is an independent claim, from which claims 2-8 ultimately depend.

Applicant thus notes that McClellan is relied upon in rejecting all the pending claims. However, Applicant submits that McClellan is not properly relied upon as prior art to the present patent application, as is now discussed in detail.

The present patent application has a filing date of August 29, 2003. McClellan was filed on February 14, 2003, and was published on August 19, 2004. Therefore, McClellan is prior art under 35 USC 102(e). Note that Applicant is not saying that some of the claims of the present patent application were rejected under 35 USC 102(e), but rather that McClellan is a 102(e) reference used in rejecting some of the claims under 35 USC 103(a). This is because McClellan was filed before the present patent application was filed, but was published after the present patent application was filed.

Applicant submits that McClellan was commonly owned with the present patent application at the time the invention of the present patent application was made, such that McClellan cannot be considered prior art pursuant to 35 USC 103(c). Pursuant to the requirements promulgated under MPEP sec. 706.02(l)(2)II.,¹ Applicant provides the following section.

**COMMON OWNERSHIP OF US PATENT APPLICATION 2004/0160510 AND
PRESENT PENDING US PATENT APPLICATION 10/652,005 AT THE TIME OF THE
INVENTION OF PATENT APPLICATION 10/652,005 WAS MADE**

Applicant hereby submits that US patent application 2004/01605104 and the present pending US patent application 10/652,005, at the time the invention of patent application 10/652,005 was made, were commonly owned by, and/or subject to an obligation of assignment to the same party, Hewlett-Packard Development Company, LP, a limited partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249 Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

¹ This section of the MPEP states that the "statement concerning common ownership should be clear and conspicuous (e.g., on a separate piece of paper or in a separately labeled section) Applicants *may, but are not required to*, submit further evidence . . . in addition to the above-mentioned statement concerning common ownership. For example, an attorney . . . [i]n her response for Application X states, in a clear and conspicuous manner that 'Application X and Patent A were made at the time the invention of Application X was made, owned by Company Z.' This statement alone is sufficient evidence to disqualify Patent A from being used in a rejection under 35 USC 103(a) against the claims of Application X."

Therefore, insofar as McClellan is not properly considered prior art, the pending claims are patentable – and Applicant traverses the rejection of the pending claims under 35 USC 103(a) – for this reason.

Conclusion

Applicants have made a diligent effort to place the pending claims in condition for allowance, and request that they so be allowed. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Mike Dryja, Applicants' Attorney, at 425-427-5094, so that such issues may be resolved as expeditiously as possible. For these reasons, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,



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Date

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